INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	5
Argument	9

CITATIONS

Cases:

Cox v. *United States*, 332 U.S. 442	9
Dickinson v. *United States*, 346 U.S. 389	9
Sicurella v. *United States*, No. 250, O.T. 1954	11

Statutes and Regulations:

Universal Military Training and Service Act, 62 Stat. 604; 65 Stat. 75:	
Section 6(j) [50 U.S.C. App. 456(j)]	2
Section 12(a) [50 U.S.C. App. 462(a)]	3
Selective Service Regulations, Title 32 C.F.R. (1951 ed.):	
Section 1622.1	3
Section 1622.10	4
Section 1622.14 (E.O. 10420, 17 F. R. 11593, Dec. 19, 1952, 32 C.F.R. 1954 Supp.)	4
Section 1626.25 (E.O. 10363, 17 F. R. 5456, June 18, 1952, 32 C.F.R. 1954 Supp.)	4
Section 1626.26	5
Section 1627.1	5

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 450

WALKER DALE BOSTON BATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (R. 117-124) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 19, 1954 (R. 125). The petition for a writ of certiorari was filed on November 16, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was a basis in fact for the presidential appeal board of the Selective Service System to change petitioner's classification as a conscientious objector to that of a person available for military service.

STATUTES AND REGULATIONS INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 612, 622; 65 Stat. 75, 86:

Section 6(j) [50 U.S.C. App. 456(j)]:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in

lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * * .

Section 12(a) [50 U.S.C. App. 462(a)]:

Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * * .

Selective Service Regulations, Title 32 C.F.R. (1951 ed.), Section 1622.1 provides:

General principles of classification.

* * * * *

(c) * * * Each registrant will be considered as available for military service until his eligibility for deferment or exemption from military service is clearly established to the satisfaction of the local board. * * *

Section 1622.10:

Class I-A. Available for military service. In Class I-A shall be placed every registrant who has failed to establish to the satisfaction of the local board, subject to appeal hereinafter provided, that he is eligible for classification in another class.

Section 1622.14 (E.O. 10420, 17 F.R. 11593, Dec. 19, 1952, 32 C.F.R. 1954 Supp.):

Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest. (a) In Class I-O shall be placed every registrant who would have been classified in I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces.

* * * * *

Section 1626.25 (E.O. 10363, 17 F.R. 5456, June 18, 1952, 32 C.F.R. 1954 Supp.):

Special provisions when appeal involves claim that registrant is a conscientious objector. (a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

* * * * *

(2) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in both combatant and noncombatatant training and service in the armed forces, and the local board has classified the registrant in Class I-O, the appeal board shall proceed with the classification of the registrant. * * *

Section 1626.26:

Decision of appeal board. (a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant * * *.

Section 1627.1:

Who may appeal to the President from any determination of an appeal board. (a) When either the State Director of Selective Service or the Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may appeal to the President from any determination of an appeal board. He may take such an appeal at any time.

* * * * *

STATEMENT

Petitioner was convicted in the United States District Court for the Eastern District of Arkansas and sentenced to three years' imprisonment for

refusal to submit to induction into the armed forces (R. 1-3). On appeal, the judgment was unanimously affirmed (R. 4, 125).

Evidence for the government, most of which consisted of petitioner's selective service file (Gov. Ex. 1), may be summarized as follows:

Petitioner registered with Local Board No. 14 at Roseburg, Oregon, on September 15, 1948, at a time when he was about 20 years old (R. 19). In his classification questionnaire filed on October 3, 1948, petitioner did not fill in Series VI relating to ministers or ministry students, but he did sign Series XIV, stating that by reason of religious training and belief he was conscientiously opposed to participating in war in any form and requesting SSS Form 150 for conscientious objectors. In the questionnaire he stated that he worked a 40-hour week at $1.50 per hour for the Dollar Lumber Company. (R. 20-23.)

Petitioner returned SSS Form 150 to the local board on October 11, 1948, to request exemption as a conscientious objector, as a member of Jehovah's Witnesses. Petitioner stated that he attended Bible studies, that he had given lectures at some meetings, and had taken part in preaching from door to door. (R. 28-29.) In describing his religious creed in relation to participation in war he stated, "The Bible show [sic] that Jehovah God's people are not to participate in any organization of this world in order to keep our covenant or contract with him to do his will" (R. 31).

On March 21, 1949, petitioner was given a 3-A dependency classification (R. 23). He forwarded

to the local board on December 15, 1950, a new information sheet, in which he stated that "for religious reasons [he could] not participate in any form of military service" (R. 34-35). On January 3, 1951, he was given what was at that time a 4-E conscientious objector classification (R. 24).

On November 27, 1951, petitioner was classified I-A-O, which meant that he was liable for induction to serve in a noncombatant capacity (R. 24). In a letter dated December 6, 1951, petitioner objected to this classification, and an appointment was made for his personal appearance before the local board (R. 35-36). On January 16, 1952, petitioner appeared before the local board, was questioned by a member of the board, submitted four affidavits of Jehovah's Witnesses attesting to petitioner's sincerity as a conscientious objector, and was granted the I-O classification he desired (R. 5, 37-40). In a new information sheet required of I-O registrants dated February 23, 1952, petitioner stated that he was enrolled in a course of Theocratic Ministry conducted by Jehovah's Witnesses, under the direction of the Watchtower Bible & Tract Society (R. 40-42).

After petitioner had passed a physical examination (R. 51-54), SSS Form 151, "Application of Volunteer for Civilian Work", was forwarded to petitioner so that he could express his preference for the type of civilian work he wanted to do as a conscientious objector (R. 55-59, 70-72). In a letter dated November 12, 1952, to the Oregon State Headquarters petitioner stated that he was not qualified to work at any of the listed jobs and

inquired, "Just when was this law past [sic] to draft labor" (R. 60). The reply from State Headquarters dated December 1, 1952, explained how conscientious objectors were required to serve 24 months at civilian jobs related to national health and welfare in lieu of serving in the armed services, and again directed petitioner to list his preferences for work assignment (R. 61).

On December 9, 1952, petitioner wrote Local Board No. 14 stating that since he was an ordained minister he felt that he was entitled to a minister's classification; that he was enclosing affidavits of five people, including his father, to show his work as a minister (R. 64-70); and stating, "I am returning the SSS form no. 151 incomplete as I cannot except [sic] any civil job. As it would enterfear [sic] with my minister work" (R. 63-64). On December 19, 1952, the State Director appealed petitioner's I-O classification to the state appeal board (R. 25, 72-73). After petitioner's file was forwarded to Oregon State Headquarters, on January 8, 1953, the state board by a vote of 4 to 0 classified petitioner I-O (R. 25, 77-79).

At petitioner's request, since he did not feel that the information as to his ministerial status had been fully considered, his file was on January 27, 1953, forwarded for consideration by the presidential appeal board (R. 80-83). On May 15, 1953, after asking for, and receiving, additional information, the presidential appeal board, without giving specific reasons, classified petitioner I-A by a vote of 3 to 0 (R. 26, 93-94).

In a letter to Oregon State Headquarters dated June 16, 1953, petitioner requested reconsideration of his file and enclosed a certificate by the Watchtower Bible & Tract Society to the effect that he had been a duly ordained minister for Jehovah's Witnesses since January 17, 1943 (R. 99-101). Petitioner was informed by his local board that this information was in letters already in the file, and had been considered when his file was previously reviewed (R. 102-103).

ARGUMENT

The court below expressly held that the selective service boards were justified in inferring from the proven facts and circumstances that petitioner's claim of a *ministerial* status was lacking in sincerity (R. 124).[1] Presenting no challenge to this ruling in his petition for certiorari, petitioner

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[1] There was no substance whatever to petitioner's claim asserted in the court below that he should be classified IV-D as a minister of religion. This was substantially a reiteration of the position rejected by this Court in *Cox* v. *United States*, 332 U.S. 442, 444-450, that all members of Jehovah's Witnesses are ministers. Petitioner's file disclosed that he was only one of the numerous Jehovah's Witnesses who attend Bible studies, engage in religious study talks, and preach publicly and from house to house (R. 11-12, 29, 86-88, 100-101). He neither practiced these activities as a "vocation" (*Dickinson* v. *United States*, 346 U.S. 389, 395), nor was he in any sense a "leader" of a "religious faith" (*id.*, p. 394). His vocation was secular as a lumber worker and a farmer. Moreover, on October 3, 1948, he did not claim any minister classification in his original questionnaire (R. 21), even though much later on June 16, 1953, he was to claim that he had been a minister since January 17, 1943, when he was 15 years old (R. 99-100).

relies upon his contention that there was no basis in fact for the presidential board to reclassify him I-A after his I-O classification by the local and state boards (Pet. 11-12).

At the outset, it should be noted that petitioner is in error in interpreting the decision of the court below as holding that he had waived his conscientious objector claim by appealing and claiming a ministerial classification (Pet. 11). Petitioner's argument presumably stems from the District Court's statement in overruling his motion for an acquittal (R. 12): "I am likewise convinced that the complete change of front effected by the [petitioner] in abandoning his claim for 1-O classification as soon as he found out that he was going to have to go into a certain line of work which he did not care for, and asserting a claim for a ministerial exemption to which it was found that he was not entitled, justified the Presidential Appeal Board in determining that neither of the claims made by him was honest or sincere, and that he should be put in Class 1-A." However, this was not a holding by the District Court that petitioner had waived his claim to the I-O classification, but merely a recognition that petitioner's shift in position could support a finding of insincerity in regard to both the ministerial and the conscientious objector claims. Immediately after this statement, the District Court discussed petitioner's conscientious objector claim, and noted that his statements on the questionnaire were so "vague and unsatisfactory" that they lacked the genuineness to be expected from one

having sincere conscientious objections (R. 12). In according deference to the ruling of the District Court, the court below made no decision that petitioner had waived his conscientious objector claim by shifting to a ministerial claim, but rather agreed with the District Court "that there was factual basis for the action of the Board in classifying [petitioner] 1-A and in denying his claim of exemption from military service" (R. 124).

We think that, for the reasons set forth by both courts below, there is a basis in fact for the I-A classification. Certainly, this record indicates very clearly a factor present in many cases involving Jehovah's Witnesses, *i.e.,* that opposition to service stems less from an abhorrence to war than from a desire not to submit to any form of civil authority. Petitioner was content with a conscientious objector classification only as long as it resulted in complete exemption from service. It is the position of the government that this type of opposition to authority is not a basis for deferment under the statute.

However, the factor of opposition to governmental authority is one of the bases on which the Court of Appeals for the Seventh Circuit upheld a I-A classification in *Sicurella* v. *United States,* No. 250, O.T. 1954, now pending before this Court. Consequently, the decision to be rendered in *Sicurella* may materially assist in the proper disposition of the instant case. For that reason we suggest that, unless the Court determines that the judgments of the lower courts can be sustained on

the factual ground that petitioner lacked personal sincerity, in which case the petition should be denied, it would be appropriate to defer action on this petition until the pending conscientious objector cases are decided.

Respectfully submitted,

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DECEMBER, 1954.

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